

Hardeep “Dee” Sull, Esq.  
 3753 Howard Hughes Parkway, Suite 200  
 Las Vegas, NV 89169  
 NV 12108  
 Tel: (702) 953-9500  
 Fax: (702) 297-6595  
 dee@sullglobal.com

**IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA  
 LAS VEGAS, NEVADA  
 CIVIL DIVISION**

ABEL, Barrett	)	COMPLAINT FOR
9812 Enchanted Valley Court	)	MANDAMUS PURSUANT
Las Vegas, Nevada 89117	)	TO THE MANDAMUS ACT,
	)	28 U.S.C. § 1361, AND, FOR
and,	)	DECLARATORY AND
	)	INJUNCTIVE RELIEF
ZARE, Maryam	)	PURSUANT TO THE
Unit 3, No. 11 Morvarid Residential	)	ADMINISTRATIVE
Complex, 8 <sup>th</sup> Ally Molanda Blvd.,	)	PROCEDURE ACT,
Sadra Town, Shiraz, Iran	)	5 U.S.C. § 701, <i>et seq.</i>

v.

ANTONY BLINKEN, in his official  
 capacity as U.S. Secretary of State  
 c/o Executive Office, Office of the Legal  
 Advisor, Suite No. 5.600,  
 600 19<sup>th</sup> Street NW  
 Washington, DC 20522

and,

U.S. Department of State, Office of the  
 Legal Advisor, Suite No. 5.600,  
 600 19<sup>th</sup> Street NW  
 Washington, DC 20522

Case No.:

Judge:

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**COMPLAINT**

1. On January 27, 2017, then-President Donald J. Trump fulfilled part of his “America First” campaign pledge by implementing a complete and total ban on entry into the United States for individuals and families from a group of predominantly Muslim countries.<sup>1</sup> The Executive Order, known as “Protecting the Nation from Foreign Terrorist Entry into the United States,” suspended entry of lawful immigrants from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.
2. This initial Executive Order was colloquially known as the “Muslim Ban,” and suffered backlash from business leaders, news media and immigration law experts. A few weeks after its introduction, the Trump Administration relented to ongoing pressure that it excluded immigrants based on religion, and issued a revised version of the Executive Order.
3. In its second version, according to the Administration, the ban was necessary to eliminate “heightened concerns about terrorism and travel to the United States,” and to “ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles.” Specifically, the terms held that “The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law.”

- 1 4. While several provisions of the travel ban would be voluntarily eased by the Trump  
2 Administration, and others would be challenged in District Courts and U.S. federal  
3 Courts of Appeal, the U.S Supreme Court ultimately handed Trump a victory. The  
4 U.S. Supreme Court in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), found the  
5 language of Executive Order to comport with the U.S. Constitution as non-  
6 pretextual, and granted the Administration the right to continue to exclude  
7 individuals from certain countries.  
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- 11 5. Iran was one of the countries listed in the original Executive Order, and throughout  
12 the revisions, remained positioned prominently as a country central to the Trump  
13 Administration's anti-immigrant plans. As part of the ban, the U.S. Department of  
14 State suspended the issuance of new immigrant visas and new non-immigrant visas  
15 (with exceptions for F, M and J visas) for Iranians. The Executive Order effectively  
16 halted the issuance of visas which would result in lawful permanent residency for  
17 Iranian nationals.  
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- 20 6. On January 20, 2021, prior to the end of his first day in office, President Biden  
21 revoked the Trump-era travel bans with the issuance of his own Executive Order,  
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27 <sup>1</sup> Executive Order 13769, "Protecting the Nation from Foreign Terrorist Entry into the United States, January 27, 2017,  
28 available at: <https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>.

1 No. 10141.<sup>2</sup> While immigration advocates and immigrant families welcomed the  
2 news, it would serve as a pyrrhic victory for the Plaintiffs in this case.  
3

4 7. Plaintiff Zare is a citizen and national of Iran who applied for an Immigrant Visa on  
5 September 24, 2020 by filing a DS-260, Department of State Visa Application, via  
6 the Consular Electronic Application Center. Her case was registered with the U.S.  
7 Department of State, and she was placed in line for adjudication of her application  
8 and issuance of her immigrant visa.  
9

10 8. Plaintiff Zare sought entry into the United States so that she could reunite with her  
11 husband, Barrett Abel, a United States citizen. As part of the lawful immigration  
12 process, Plaintiff Zare was required to complete processing, including a consular  
13 interview, at a United States Embassy abroad.  
14

15 9. As Plaintiff Zare is a citizen and national of Iran, a country in which the United  
16 State does not currently have a diplomatic post, she was required to complete  
17 consular processing at a location outside of Iran.  
18

19 10. Typically, Iranian nationals, pursuant to current U.S. State Department policy,  
20 process through a U.S. Consulate or Embassy in one of three, third-party countries,  
21 namely: Turkey, the United Arab Emirates or Armenia. Plaintiff Zare elected  
22 consular processing in Turkey.  
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<sup>2</sup> “Biden reverses Trump’s ‘Muslim ban.’ Americans support the decision.” Washington Post, January 27, 2021, available  
28 at: <https://www.washingtonpost.com/politics/2021/01/27/biden-reversed-trumps-muslim-ban-americans-support-that-decision/>

11. However, when Plaintiff Zare filed her consular application and actively sought to process through the U.S. Embassy in Ankara, Turkey--her application was met with a series of unreasonable and unlawful procedural policy delays. As of today, over six months since the filing of her application, her consular application remains pending with Defendants.

12. Perhaps most important to Plaintiffs' delay case is that Plaintiffs are unable to actually move the case forward based on an unusual policy imposed by Defendants on February 4, 2021. The implementation of this policy, has further delayed the issuance of Plaintiff's Immigrant Visa. The policy reads as follows:

“Due to health and safety concerns related to the COVID-19 global pandemic, as of February 4, 2021, the U.S. Embassy in Ankara is only providing immigrant visa services to Turkish Citizens and Turkish residents. For Third Country Nationals (“TCNs”) who have Turkish resident permits, please email [AnkaraIV@state.gov](mailto:AnkaraIV@state.gov) with the front and back of your Turkish resident permit so we can discuss the next steps. Unless there is a genuine humanitarian or medical emergency, the U.S. Embassy in Ankara is unable to provide visa services to TCNs who do not have Turkish resident permits. Please note that appointments are limited due to reduced staffing and health and safety precautions associated with the COVID-19 pandemic.”

13. This policy, as written, effectively excludes Third Country Nationals (“TCNs”) like Plaintiff Zare from pursuing a visa in Turkey. The basis for this policy appears to be “health and safety concerns” associated with COVID-19; however, further health guidance states that access to the U.S. State Department facilities is limited to those who are physically present in Turkey for at least ten days, and who do not have cold or flu symptoms for at least the past fourteen days. The exclusion of TCNs does

1 not appear to be reasonably related to public health, as Turkish nationals have  
2 access to visa services and only need to demonstrate no symptoms within the last  
3 two-week period.  
4

5 14. The practical impact of Defendants' policy is exacerbated by the fact that Plaintiffs  
6 have been told they cannot transfer their case to another Embassy—such as that in  
7 United Arab Emirates or Armenia. Plaintiffs, in an effort to have the visa  
8 application approved, inquired into transferring the application to the U.S. Embassy  
9 in Armenia; however, they were told that is not possible.  
10

11 15. Despite ongoing communication with Department of State about the status of her  
12 application, and complete willingness to provide any additional information to  
13 facilitate issuance of the visa, Plaintiff Zare's Immigrant Visa Application remains  
14 pending. With no end in sight for their wait, and U.S. State Department policies  
15 totally divorced from the stated health and safety concerns, Plaintiffs now seek  
16 mandamus relief from this Court.  
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19

### 20 **JURISDICTION**

21 16. This case arises under the Mandamus Act, 28 U.S.C. § 1361, and the  
22 Administrative Procedure Act, 5 U.S.C. § 706 *et seq.* Moreover, this court has  
23 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 as  
24 the issue relates to a federal question. The Court also has authority to grant  
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1 declaratory relief under 28 U.S.C. § 2201 and injunctive relief under the  
2 Administrative Procedure Act.

3  
4 17. Specifically, the Mandamus Act vests this Court with original jurisdiction over  
5 “any action in the nature of mandamus to compel an officer or employee of the  
6 United States or an agency thereof to perform a duty owed to the Plaintiff.” *See* 28  
7 U.S.C. § 1361.  
8

9 18. Similarly, the Administrative Procedure Act authorizes this Court to review an  
10 agency action and to “compel agency action unlawfully withheld or unreasonably  
11 delayed.” 5 U.S.C. § 706(1).  
12

13 19. Indeed, under the Administrative Procedure Act, The United States has waived its  
14 sovereign immunity as a judgment or decree may be entered against it under 5  
15 U.S.C. § 702.  
16

### 17 VENUE

18  
19 20. Venue in the U.S. District Court, District of Nevada, is proper under 28 U.S.C.  
20 §1391(e) because Plaintiff, Barrett Abel, the U.S. citizen spouse of Plaintiff Zare,  
21 resides within this judicial district, and the Defendants in this matter are officers  
22 and employees of the United States.  
23

### 24 EXHAUSTION

25  
26 21. Plaintiffs have exhausted their administrative remedies. Indeed, Plaintiffs have  
27 made numerous inquiries regarding the status of the application. Defendants  
28

1 continue to assert in responses to the inquiries that the case cannot be decided and  
2 the visa cannot be issued in Ankara because Plaintiff Zare is a Third Country  
3 National  
4

### 5 **PARTIES**

6  
7 22. Plaintiff, Barrett Abel, is a citizen and national of the United States who currently  
8 resides in Las Vegas, Nevada. Plaintiff Abel is married to Plaintiff Zare, and the  
9 couple had lived together and traveled together since their wedding on August 23,  
10 2019. Plaintiff Abel is the petitioner who filed the underlying immigrant visa  
11 petition which was approved. He then sought consular processing of the immigrant  
12 petition for his wife. Plaintiff Abel has a net worth of less than \$2 million as  
13 contemplated by the *Equal Access to Justice Act*, 28 U.S.C. § 2412.  
14

15  
16  
17 23. Plaintiff, Maryam Zare, is a citizen and national of Iran who is currently awaiting  
18 adjudication of her immigrant visa at the U.S. Embassy in Ankara, Turkey.  
19 Plaintiff Zare is married to Plaintiff Abel, a United States citizen, who sought an  
20 immigrant petition for her through consular processing. Although the couple  
21 previously resided together and traveled together, Plaintiff Zare returned to Iran for  
22 the explicit purpose of scheduling her immigrant visa interview at the U.S.  
23 Embassy in Ankara, Turkey. Plaintiff Zare has a net worth of less than \$2 million  
24 as contemplated by the *Equal Access to Justice Act*, 28 U.S.C. § 2412.  
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1 24. Defendant Antony Blinken, in his official capacity, is the Secretary of the U.S.  
2 Department of State (“DOS”), having been lawfully confirmed by the U.S. Senate  
3 on January 26, 2021. In this capacity, he oversees the management of DOS  
4 personnel and operations in the United States and at U.S. Embassies and Consulates  
5 abroad, including the U.S. Embassy in Ankara, Turkey.  
6

7  
8 25. Defendant U.S. Department of State is the federal department responsible for  
9 diplomatic initiatives throughout the world, including the evaluation of and  
10 issuance of immigrant and non-immigrant visas to qualifying foreign nationals. *See*  
11 22 U.S.C 38 § 2651, *et seq.* A change in U.S. State Department policy, related to  
12 adjudication of Third Country Nationals has now stranded Plaintiff Zare in Iran  
13 without the reasonable possibility of processing her immigrant visa at the chosen  
14 U.S. Embassy location in Turkey.  
15  
16

### 17 FACTS AND LAW

18  
19 26. Plaintiffs now seek to compel the U.S. Department of State to act on a visa  
20 application, and there is clear caselaw outlining the Court’s jurisdiction. The Ninth  
21 Circuit Court of Appeals, in *Patel v. Reno*, 134 F.3d 929, 931-32 (9th Cir. 1997),  
22 held that while “normally, a consular official’s discretionary decision to grant or  
23 deny a visa petition is now subject to review,” the failure to take any action on a  
24 petition invokes mandamus jurisdiction. *Id.*  
25  
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1 27. Similarly, other Circuit Courts have held that mandamus is appropriate for stalled  
2 visa applications, over objections of consular non-reviewability, when no decision  
3 has been made by a consular officer. *See, e.g., Mulligan v. Schultz*, 848 F.2d 655,  
4 657 (5th Cir. 1988); *Samirah v. Holder*, 627 F.3d 652, 663–664 (7th Cir. 2010).

6 28. Congressional policy indicates that all immigrant visa applications should be  
7 decided within six months. 8 U.S.C. § 1571(b).

9 29. On November 14, 2019, Plaintiff Abel initiated the immigrant visa process by filing  
10 an I-130, Petition for Alien Relative with the United States Citizenship and  
11 Immigration Service (“USCIS”). (Receipt No. IOE0907879233). *See* Attached  
12 Exhibit A.  
13

14 30. On June 29, 2020, the I-130 Petition was approved. *Id.* The notice advised Plaintiffs  
15 that the case would be sent to the National Visa Center for continued visa  
16 processing with the Department of State.  
17

18 31. On July 9, 2020, the National Visa Center advised that Plaintiff Zare’s case had  
19 been created and a formal Immigrant Visa Application number had been assigned.  
20 The Application required the submission of fees and additional documents to the  
21 National Visa Center for continued processing. *See* Attached Exhibit B.  
22

23 32. In late September 2020, Plaintiffs filed the requisite documents with the National  
24 Visa Center in support of Plaintiff Zare’s Immigrant Visa Application. *See*  
25 Attached Exhibit C.  
26  
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1 33. On or about October 2, 2020, Plaintiffs were informed that the National Visa Center  
2 “received all of the fees, forms, and documents that are required prior to attending  
3 an immigrant visa interview” and that “NVC will work with the U.S.  
4 Embassy/Consulate General in ANKARA, TRKY to schedule an interview  
5 appointment for you.” *See* Attached Exhibit D.  
6  
7

8 34. On or about February 4, 2021, the U.S. Embassy in Ankara, Turkey issued a policy  
9 statement which held that the Embassy would only be “providing immigrant visa  
10 services to Turkish Citizens and Turkish residents,” and that Third Country  
11 Nationals or (“TCNs”) would not be offered visa services. This policy was alleged  
12 “due to health and safety concerns related to the COVID-19 global pandemic. It is  
13 unclear to Plaintiffs how the policy of excluding a small number of Third Country  
14 Nationals would relate to the global pandemic.  
15  
16  
17

18 35. With the announcement of this policy statement, counsel for Plaintiffs sought a  
19 transfer of the immigrant visa case to another U.S. Embassy. As the U.S. Embassy  
20 in Turkey was no longer an option, immigrant visas for Iranian nationals are only  
21 being processed through U.S. Embassies in the United Arab Emirates and Armenia.  
22

23 36. However, on November 23, 2020, the United Arab Emirates (UAE) suspended  
24 travel visas for nationals from thirteen countries, including Iran.<sup>3</sup> The policy was  
25 announced in a statement by the Dubai Airport Freezone Authority, but no details  
26  
27  
28

1 were provided as to the basis of the decision. The travel suspension remains in  
2 effect as of today.

3  
4 37. With United Arab Emirates no longer a possibility, Counsel inquired about  
5 transferring the case for Plaintiff Zare to the U.S. Embassy in Yerevan, Armenia.

6  
7 38. On or about March 3, 2021, Counsel was advised that the U.S. Embassy in  
8 Yerevan, Armenia would not accept immigrant visa transfers for Iranian nationals.  
9 *See Attached Exhibit E.*

10  
11 39. In early April 2021, Plaintiff Abel, through Counsel, sought Congressional  
12 assistance through the Office of Catherin Cortez Masto, U.S. Senator. While staff  
13 from the Senator's Office has responded, they recently advised that a temporary  
14 pandemic lock-down in Turkey has closed the U.S. Embassy. There was no update  
15 as to the other options for processing the case in light of the current policy against  
16 processing for Third Country Nationals.  
17  
18

19 40. Similarly, on April 30, 2021, Defendant Department of State issued policy  
20 guidelines entitled "Immigrant Visa Prioritization" which outlined the process for  
21 adjudication of visas at Embassies and Consular outposts.<sup>4</sup> While immediate  
22 relative visas were listed as "Tier Two" applications, the applications listed in "Tier  
23 One" are atypical and relatively uncommon petitions. As such, Department of State  
24  
25  
26

27  
28 <sup>3</sup> "UAE halts new visas to citizens of 13 mostly Muslim states: document," November 25, 2020, Reuters, available at:  
<https://www.reuters.com/article/us-embassies-immigration/uae-halts-new-visas-to-citizens-of-13-mostly-muslim-states-document-idUSKBN2850OI>

1 noted that the “Immigrant Visa Prioritization plan “instructs posts to maximize their  
2 limited resources to accommodate as many immediate relative and finace(e) cases  
3 as possible...” *Id.*

4  
5 41. Plaintiff Barrett has an immediate relative immigrant visa pending, on behalf of his  
6 wife, Plaintiff Zare, with Defendant Department of State.  
7

8 42. Moreover, despite completing the relevant applications, paying the necessary fees  
9 and following all necessary procedures, Defendant Department of State failed to  
10 decide Plaintiff Zare’s immigrant visa application.  
11

12 43. As of today, more than six months from the original filing by Plaintiffs, there has  
13 been no decision on the immigrant visa petition and there has been no decision on  
14 the scheduling of an interview.  
15

16 44. Indeed, the U.S. Embassy in Ankara, Turkey, has indicated that it is no longer  
17 processing immigrant visa applications for Iranians. The United Arab Emirates will  
18 no longer allow entry into the country for Iranian citizens. Despite these  
19 circumstances, the U.S. Embassy in Yerevan, Armenia, the only remining location  
20 processing Iranian immigrant visa applications, will not allow cases to be  
21 transferred there for processing.  
22  
23

24 45. Defendant Department of State has harmed Plaintiffs by causing undue delay in  
25 issuing or refusing to issue Plaintiff Zare an immigrant visa when the law clearly  
26  
27

28 <sup>4</sup> “Immigrant Visa Prioritization,” April 30, 2021, U.S Department of States, available at:  
<https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-prioritization.html>

1 provides that the agency is required to make such a decision in a reasonable time on  
2 the case.

3  
4 46. Defendants' own actions, in limiting the processing of Third Country Nationals at  
5 the U.S. Embassy in Ankara, Turkey, has exacerbated this delay.

6  
7 47. Defendants' own actions, in refusing to transfer the immigrant visa case to the U.S.  
8 Embassy in Yerevan, Armenia, has exacerbated this delay.

9  
10 48. Plaintiffs have provided all information requested and have timely communicated  
11 with the Department of State about the immigrant visa request. Defendants have  
12 had sufficient time and information to adequately schedule an interview with  
13 Plaintiff Zare to determine whether to issue her an immigrant visa. Defendants'  
14 delay is unreasonable and unlawful.

15  
16 **RELIEF**

17  
18 **COUNT I-**  
19 **Relief Under the Mandamus Act**

20 49. Plaintiffs re-allege and incorporate by reference, as if fully restated, the facts and  
21 allegations in all preceding paragraphs.

22  
23 50. Plaintiffs request the Court order the Defendants to immediately adjudicate the  
24 application for an immigrant visa of Plaintiff Zare pursuant to the Mandamus Act,  
25 28 U.S.C. § 1361.

26  
27 51. Plaintiffs have a clear and certain right to the relief requested.  
28

1 52. Defendant Blinken as Secretary of State, head of the U.S. Department of State, the  
2 federal agency responsible for the review and issuance of immigrant visas, has a  
3 certain, mandatory, ministerial duty to issue or refuse Plaintiff Zare's application  
4 for an immigrant visa.  
5

6 53. Indeed, federal regulations provide that the Defendant, U.S. Department of State,  
7 "must either issue or refuse" a visa. 8 C.F.R. § 42.81(a); *see also* 9 FAM 504.1-3(g)  
8 ("A consular officer cannot temporarily refuse, suspend, or hold the visa for future  
9 action."").  
10  
11

12 54. Defendants have failed to timely and reasonably adjudicate Plaintiff Zare's  
13 immigrant visa request.  
14

15 55. Plaintiffs have no administrative remedy available to them other than seeking relief  
16 from this Court.  
17

18 **COUNT II –**  
19 **Relief under the Administrative Procedure Act, 5 U.S.C. § 701, et seq.**  
20

21 56. Plaintiffs re-allege and incorporate by reference, as if fully restated, the facts and  
22 allegations in all preceding paragraphs.  
23

24 57. Pursuant to 5 U.S.C. § 706, Plaintiffs seek review by this Court and request that the  
25 Court compel agency action unlawfully withheld or unreasonably delayed by  
26 Defendants.  
27

28 58. The Department of State has a duty to adjudicate Plaintiff's visa petition in a  
reasonable amount of time. *See* 8 C.F.R. § 42.81.

1 59. The continued inaction of Defendants, and the unreasonable delay in adjudicating  
2 the visa application, is causing harm to Plaintiffs in this case.

3  
4 60. Plaintiffs have no other administrative remedy available to them beyond those plead  
5 herein.

6 **WHEREFORE**, Plaintiffs request the following relief from the District Court of the  
7 District of Nevada:  
8

- 9 A. Mandate that the Defendant adjudicate Plaintiff Zare's application for an  
10 immigrant visa within ten days;  
11  
12 B. Award Plaintiffs costs of this action pursuant to 28 U.S.C. § 2412(b), *et seq.*;  
13 and,  
14  
15 C. Grant Plaintiffs any and all other relief this court deems equitable and just.  
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21

Respectfully submitted for Plaintiffs,

22 \_\_\_\_\_  
23 Hardeep "Dee" Sull, Esq.  
24 3753 Howard Hughes Parkway, Suite 200  
25 Las Vegas, NV 89169  
26 NV 12108  
27 Tel: (702) 953-9500  
28 Fax: (702) 297-6595  
dee@sullglobal.com  
Attorney for Plaintiffs



**Certificate of Service**

I hereby certify that the foregoing complaint will be served as soon as the summons is available on the following persons by certified mail, return receipt requested, and that the appropriate proof of filing will be provided to this Court timely.

Antony Blinken,  
U.S. Secretary of State  
Office of the Legal Advisor, Suite No. 5.600,  
600 19<sup>th</sup> Street NW  
Washington, DC 20522

U.S. Department of States  
Office of the Legal Advisor, Suite No. 5.600,  
600 19<sup>th</sup> Street NW  
Washington, DC 20522

Merrick Garland, Esq.  
U.S. Attorney General  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Christopher Chiou, Esq.  
Acting U.S. Attorney  
501 Las Vegas Blvd. South, Suite 1100  
Las Vegas, NV 89101

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Hardeep “Dee” Sull, Esq.  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Tel: (702) 953-9500  
Fax: (702) 297-6595  
dee@sullglobal.com  
Attorney for Plaintiffs

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